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May 9, 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

*Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to
Accelerate Investment in Broadband and Next-Generation Networks,
WC Docket No. 18-141*

Dear Ms. Dortch:

Attached is the Redacted version of the Comments of Verizon ("Comments") in the above-captioned matter. Verizon is filing the Highly Confidential version of these Comments under separate cover.

Thank you for your assistance in this matter. Please contact me at 202-326-7930 or eleo@kelloggghansen.com if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Evan T. Leo /mkl".

Evan T. Leo

Attachment

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition of USTelecom for Forbearance
Pursuant to 47 U.S.C. § 160(c) to
Accelerate Investment in Broadband and
Next-Generation Networks

WC Docket No. 18-141

COMMENTS OF VERIZON

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May 9, 2019

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	1
I. THE RECORD SUPPORTS ELIMINATING TRANSPORT AND DARK FIBER UNES	4
A. The BDS Data Demonstrate the Commission Should Eliminate Transport UNEs	4
B. Evidence from the Forbearance Proceeding Further Supports the Elimination of Transport UNEs	9
C. The Commission Should Grant Forbearance from Transport UNEs on a Nationwide Basis, But at a Minimum Should Do So Consistent with USTelecom’s Recently Proposed Framework	12
D. The Commission Should Grant Forbearance from Dark Fiber UNEs Nationwide	15
II. THE COMMISSION SHOULD FORBEAR FROM THE OTHER UNBUNDLING AND RESALE OBLIGATIONS COVERED BY USTELECOM’S PETITION	17
CONCLUSION	21

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INTRODUCTION AND SUMMARY

The unbundling and resale provisions of the 1996 Act have outlived their time. The record in the USTelecom forbearance proceeding – particularly as recently supplemented with data from the Business Data Services (“BDS”) proceeding – establishes that the Commission should grant USTelecom’s petition and forbear from enforcing these anachronistic and lopsided requirements. Indeed, Windstream, one of the largest CLECs, has already withdrawn its objection to the forbearance petition, subject to a reasonable transition period that USTelecom agreed is appropriate for the embedded base of unbundled network elements (“UNEs”).¹ The Commission should grant nationwide forbearance from all unbundling and Section 251(c)(4) resale requirements.

If, despite the settlement with Windstream and all other evidence in the record including the BDS data, the Commission were to grant less than nationwide forbearance, then the Commission should still recognize the widespread extent of competition today shown in the record and forbear from unbundling obligations in those areas. Specifically, with respect to TDM-based transport UNEs (“transport UNEs”), the BDS data show that more than 92% of total buildings with BDS demand in price cap areas – including approximately 78% of ILEC central offices nationwide – are within a half mile of competitive transport facilities.² Other evidence shows that the vast majority of all transport UNEs are purchased in urban areas where BDS demand is heavily concentrated and competition is robust, not in rural or other areas where

¹ See Letter from Jonathan Banks, USTelecom, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (June 21, 2018).

² That number is necessarily conservative; it is based on competitive deployment as of 2013 that understates the current extent of cable among other competitive facilities.

deploying facilities is less economic. This record supports nationwide forbearance for transport UNEs. At a minimum, the Commission should adopt USTelecom's recently proposed framework³ and forbear from unbundling obligations for interoffice routes between wire centers that qualify as Tier 1 or Tier 2 wire centers under the Commission's unbundling rules. Each of these wire centers has been shown to contain a substantial concentration of business demand, significant facilities-based competition, or both.

The BDS data also provide further support for eliminating unbundling of digital loops, which like transport UNEs are used overwhelmingly in areas where competition already exists. These data show that competitors today are serving or readily able to serve more than 90% of locations with BDS demand, which justified the Commission's previous removal of ex ante pricing regulation for DS1 and DS3 business data services in those areas. Other data, including the Commission's recent Form 477 data, show that cable competition has grown so rapidly that nearly 90% of the U.S. population and 90% of households have access to cable services with at least 25 Mbps download speeds – supporting national relief. However, at a minimum the Commission should grant forbearance from digital UNE loops in those areas where cable services with at least 25 Mbps download speeds are available today, as USTelecom has proposed. These are areas where the Commission has already determined that universal service funds are not required to ensure the availability of broadband services to consumers, given

³ See Letter from Patrick R. Halley, Senior Vice President, Advocacy & Regulatory Affairs, USTelecom–The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (May 6, 2019) (“USTelecom May 6 Ex Parte”).

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competition from cable.⁴ These same data on the extent of cable competition likewise support forbearance from unbundling obligations for digital loops.

At a minimum, therefore, the Commission can and should provide relief from transport UNEs and digital DS0, DS1, and DS3 UNE loops in areas where facilities-based competition unquestionably exists, and where unbundling is therefore not necessary to protect competition or consumers.⁵ Further, there is no reason not to grant nationwide forbearance from analog DS0 loops and the Section 251(c)(4) resale requirements, which are used predominantly (if not entirely) to provide voice services. Given that voice services are nationally available from cable, wireless, VoIP, and myriad other alternatives, there is no valid case for retaining these regulations anywhere in the country. To the contrary, retaining regulations that have outlived their usefulness would harm consumers, by deterring investment from competitive providers and ILECs alike.

⁴ See, e.g., FCC, *Connect America Fund Phase II Auction (Auction 903)*, <https://www.fcc.gov/auction/903> (“To be eligible, a census block could not have been served with voice and broadband of at least 10/1 Mbps (based on Form 477 data) by an unsubsidized competitor or price cap carrier.”).

⁵ The Commission’s purpose is to promote competition, and promote facilities-based competition where possible, not to protect individual competitors or subsidize particular business models. Cf. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977) (“The antitrust laws . . . were enacted for the protection of competition, not competitors.”). See also *Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corp., N.A., and C-Call Corp.*, Order, 10 FCC Rcd 3361, ¶ 30 (1995) (“The Commission’s priority is to protect competition, not competitors, for the benefit of consumers.”); *Hawaiian Tel. Co. v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974) (“equalizing competition among competitors . . . is not the objective or role assigned by law to the Federal Communications Commission”) (emphases in original).

I. THE RECORD SUPPORTS ELIMINATING TRANSPORT AND DARK FIBER UNES

The Commission has supplemented the record in the USTelecom forbearance proceeding with the data from the BDS proceeding, including the April Data Tables.⁶ The Commission recognized that, because these data are “the most comprehensive source of data for business data services,” they are relevant to “the issues raised by USTelecom’s request for nationwide relief from the [ILEC] obligation to provide dedicated transport as an unbundled network element pursuant to section 251(c)(3) of the Act and section 51.319(d) of the Commission’s rules.”⁷ The Commission has sought comment on how to use the BDS data “to evaluate USTelecom’s request for forbearance” to provide transport UNEs.⁸ As demonstrated below, the BDS data provide further evidence that the Commission should eliminate dedicated transport UNEs – and dark fiber UNEs – nationwide, or at a minimum in areas where facilities-based competition unquestionably exists.

A. The BDS Data Demonstrate the Commission Should Eliminate Transport UNEs

The Commission developed an extensive factual record in the BDS proceeding, and based on that record concluded that TDM transport services faced “substantial competition”

⁶ Public Notice at 1, *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593, DA 19-281 (rel. Apr. 15, 2019) (“April 15 Public Notice”).

⁷ Public Notice at 2, *Wireline Competition Bureau To Incorporate Business Data Services Data and Second Further Notice and Further Notice Record into USTelecom Forbearance Proceeding*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593, DA 19-249 (rel. Apr. 3, 2019).

⁸ April 15 Public Notice at 2.

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given “widespread deployment of competitive transport networks” as well as other factors.⁹ The Commission found that, as a result of this competition, it was appropriate to eliminate ex ante pricing regulation and tariff requirements for TDM transport services.¹⁰ These conclusions are directly applicable to transport UNEs and support USTelecom’s request for forbearance with respect to these UNEs.

First, the underlying facilities used to provide TDM transport services are identical to the facilities that ILECs use to provide transport UNEs.¹¹ As a consequence, the Commission’s finding of “substantial competition” for TDM transport services applies equally with respect to transport UNEs. The Commission found, for example, that as of 2013 and without fully accounting for cable competition, more than 92% of buildings with BDS demand in price cap

⁹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, ¶ 151 (2018).

¹⁰ *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, ¶¶ 90-93, 160-163 (2017) (“*BDS Order*”). Although the Eighth Circuit remanded the Commission’s determination with respect to transport, it did so solely on the procedural ground that the Commission failed to give adequate notice. As Verizon and other commenters have demonstrated, the Commission can and should reinstate its conclusions based on the existing record. Reply Comments of Verizon at 1-3, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 *et al.* (FCC filed Mar. 11, 2019) (“Verizon BDS Transport Remand Reply”); Reply Comments of AT&T at 14-17, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 *et al.* (FCC filed Mar. 11, 2019); Reply Comments of Frontier Communications at 1-2, 4, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 *et al.* (FCC filed Mar. 11, 2019); Reply Comments of CenturyLink at 1-2, 7, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 *et al.* (FCC filed Mar. 11, 2019); Reply Comments of USTelecom and ITTA at 2-4, 6, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144 *et al.* (FCC filed Mar. 11, 2019).

¹¹ See *BDS Order* ¶ 79, n.258; 47 C.F.R. § 51.319(d)(1).

areas were within a half mile of competitive transport facilities, and that these facilities covered more than 89% of census blocks with BDS demand.¹² The Commission also found that competitors can connect to buildings within a half mile of their facilities.¹³ The April Data Tables, moreover, show that approximately 78% of ILEC central offices are within a half mile of competitive fiber, and that more than 56% are within 500 feet.¹⁴ Thus, even based on 2013 data that understate the extent of competition, the evidence shows competitors either already do or readily can connect to the vast majority of ILEC central offices, and that they can therefore provide dedicated transport on most ILEC interoffice transport routes.¹⁵

Second, the Commission’s factual findings with respect to TDM transport services are applicable to transport UNEs because both involve the same geographic and product markets. Both TDM transport services and transport UNEs involve dedicated links between central offices. Thus, the Commission’s determination that more than 90% of geographic locations with BDS demand can be served economically by competitive facilities supports the elimination of transport UNEs for the same reasons this competition supported nationwide elimination of ex ante pricing regulation for TDM transport services.

¹² *BDS Order* ¶ 91.

¹³ *BDS Order* ¶ 41.

¹⁴ USTelecom May 6 Ex Parte at 2, 10-11 (citing May 6 Economists Decl. at 2, 5).

¹⁵ Likewise, the Commission’s findings in the *BDS Order* that competition for dedicated transport is likely to grow in the future – due to the “large number of firms building fiber and competing for this business,” the fact that “transport service represents the ‘low-hanging fruit’ of the business data services circuit, which makes it particularly attractive to new entrants,” and that TDM transport relies on technology that “is becoming obsolete” and is being replaced with packet-based services, creating market conditions conducive to “the deployment of competitive facilities, through either new entry or conversion” – apply equally to dedicated transport UNEs. *BDS Order* ¶¶ 2, 3, 26, 82.

With respect to the product market, both TDM transport services and transport UNEs are overwhelmingly used to serve business customers – with the only difference between them being the price that is charged.¹⁶ Although UNE transport could, in theory, provide an input to services used by mass-market customers rather than just businesses, the same is true for TDM transport.¹⁷ Indeed, Verizon’s data show that competitive providers rely on TDM transport services and transport UNEs interchangeably to serve the same customers. Based on Verizon’s experience, competitors consistently convert their DS1 and DS3 business data services to DS1 and DS3 UNEs at the same location serving the same customers. In addition, Verizon’s only use of UNEs – which is a result of our 2017 purchase of XO – is to serve business end users, not residential customers.¹⁸

Third, the Commission’s previous conclusion that competition justifies eliminating ex ante pricing regulation for TDM transport services also supports a finding that the Commission

¹⁶ See, e.g., *BDS Order* ¶ 91 n.289 (“[T]ransport services are an integral part of the business data services market and the Commission has consistently included them within the ambit of its analysis in this proceeding. . . . [C]ompetitors and [ILECs] ‘do not typically offer consumers BDS by charging a customer separately for transport, last-mile access, and channel mileage,’ offering instead ‘packaged communications solutions that include a transmission component’”); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 588 (2003) (“We recognize, however, that converting between wholesale services and UNEs (or UNE combinations) is largely a billing function.”).

¹⁷ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 379 (1999) (“*UNE Remand Order*”) (the small business and residential market segments “may not always support traffic volumes that justify using dedicated transport services”).

¹⁸ See Letter from Curtis L. Groves, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (July 20, 2018) (“Verizon July 20, 2018 Ex Parte”).

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should eliminate dedicated transport UNEs. In both cases, the relevant inquiry is whether competition is sufficient to protect the ultimate end users of those services. In the BDS context, the Commission evaluated whether competition was sufficient to ensure just and reasonable prices for TDM transport services.¹⁹ In the UNE context, the relevant inquiry is likewise whether unbundling will, on balance, ultimately deliver lower prices to consumers, after considering the strong investment-detering effects of such regulation.²⁰ Thus, both inquiries focus on whether regulation is necessary to ensure competitive prices for end users. And in both cases, when competition is deemed sufficient to ensure prices for end users are reasonable, continued wholesale regulation is not only unnecessary but also counterproductive.²¹

Finally, there is no basis for the Commission to disregard its findings in the *BDS Order* based on allegations that some prices for TDM transport services have increased following the removal of ex ante price regulation. A price increase does not prove that competition is insufficient to restrain prices or that the Commission's past predictions are wrong. As the Commission has previously acknowledged, once ex ante pricing regulation is removed, it is to be

¹⁹ *BDS Order* ¶¶ 87, 91-93.

²⁰ *UNE Remand Order* ¶ 5 (“The standards and unbundling obligations that we adopt in this Order are designed to create incentives for both incumbent and competitive LECs to innovate and invest in technologies and services that will benefit consumers through increased choices of telecommunications services and lower prices.”).

²¹ See, e.g., *United States Telecom Ass’n v. FCC*, 290 F.3d 415, 429 (D.C. Cir. 2002) (agreeing that it is “‘antithetical to the 1996 Act’s language and deregulatory objectives’ to mandate unbundling in a market that ‘already has intense facilities-based competition.’”); *Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, ¶ 500 (2016) (“[W]here competition is sufficient to ensure rates terms and conditions are just and reasonable, we find more heavy-handed regulation is likely to inhibit the development of a competitive market.”).

expected that some prices may rise, because ex ante pricing regulation may keep prices not at, but below, the levels that would be expected in competitive market.²² The Commission also acknowledged in the *BDS Order* that price-cap carriers face declining utilization and rising per-unit costs for facilities used to provide legacy TDM services, including DS1s and DS3s, due to the potential loss of scale economies.²³ The Commission concluded that these trends, together with years of X-factor reductions, have left many DS1 and DS3 rates formerly subject to price caps below cost. There is no evidence showing that any alleged price increases are due to factors other than those the Commission expressly anticipated, that such alleged increases are inconsistent with competitive levels, or that rates are unjust and unreasonable.

B. Evidence from the Forbearance Proceeding Further Supports the Elimination of Transport UNEs

In addition to the BDS data, other record evidence further demonstrates that competition for TDM transport services is widespread and has rendered the use of transport UNEs unnecessary and counterproductive. Verizon and other commenters have shown, among other things, that virtually all UNEs are purchased in urban areas where BDS demand is heavily

²² See, e.g., *Access Change Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, ¶ 155 (1999), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001) (“We recognize that the regulatory relief we grant . . . may enable incumbent LECs to increase access rates for some customers. We conclude that this relief nonetheless is warranted upon a Phase II showing for two reasons. First, some access rate increases may be warranted, because our rules may have required incumbent LECs to price access services below cost in certain areas.”).

²³ *BDS Order* ¶ 229 (“This declining utilization of DS_n-specific plant means that providers must amortize shared costs among fewer customers (i.e., unit costs are likely rising). . . . [F]or DS1 and DS3 services generally, price cap LECs’ operating expenses may have fallen at a much slower rate than the demand for their services, causing their average cost of providing DS_n services to steadily climb.”).

concentrated and competition is robust. Eliminating these UNEs will therefore not meaningfully impact competition, nor will it prevent competitive providers from obtaining access to ILEC facilities. Windstream's agreement to withdraw its opposition to the petition also confirms this. Even after UNEs are eliminated, ILECs will have every incentive to maintain reasonably priced wholesale alternatives.

First, there is very little use of transport UNEs today, and therefore competition does not depend to any meaningful extent on the availability of these UNEs. Verizon, for example,

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Second, virtually all transport UNEs are purchased in counties that the Commission has deemed competitive, and very few transport UNEs are purchased in rural areas. Verizon has demonstrated that approximately **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY
CONFIDENTIAL]** of its UNEs are purchased in counties the Commission has deemed

²⁴ Verizon currently provides fewer than **[BEGIN HIGHLY CONFIDENTIAL]** **[END
HIGHLY CONFIDENTIAL]** dedicated transport UNE circuits.

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competitive.²⁵ Data submitted by USTelecom show that nearly 92% of overall UNEs are provisioned in urban and suburban areas, while only 7% are provisioned in rural areas.²⁶

This evidence belies the claim that CLECs need UNEs to provide services in rural areas as a “bridge” to ultimately deploy fiber in those areas.²⁷ CLECs have repeatedly promised to use UNEs as a transitional mechanism to deploy their own facilities ever since the 1996 Act was passed. But despite UNEs being available in rural areas for decades, the CLECs have little facilities-based deployment to show. The continued availability of UNEs in these areas will continue to harm – not jumpstart – the emergence of facilities-based competition.

Nor would the elimination of transport UNEs reduce competition for business data services. If the Commission were to grant forbearance from transport UNEs, ILECs would have strong business incentives to continue providing transport on a wholesale basis, and they would be required to provide this access on just and reasonable terms.²⁸ The Commission in the *BDS Order* found competition adequate to restrain wholesale prices. As Verizon has previously

²⁵ Verizon Reply at 4, 7.

²⁶ See USTelecom Reply at 18; Ed Naef & Micah Sachs, CMA Strategy Consulting, *Assessing the Impact of Forbearance from 251(c)(3) on Consumers, Capital Investment, and Jobs – Reply to Comments* at 6-7 (Sept. 2018), attached to USTelecom Reply. See also CenturyLink Reply at 17-18 (“In CenturyLink’s serving area, CLECs generally purchase UNEs to serve business customers in urban and suburban areas. UNEs are typically purchased in census blocks that are four times as dense as those where UNEs are not purchased. Notably, 92 percent of UNEs are purchased within municipal boundaries, as compared to 69 percent and 83 percent of CenturyLink’s retail residential and business lines, respectively”).

²⁷ See Letter from Karen Reidy, Vice President, Regulatory, INCOMPAS, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 & RM-10593 (Apr. 17, 2019) (“INCOMPAS April 17, 2019 Ex Parte”).

²⁸ See Verizon Comments at 29-30; Verizon Reply at 8.

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explained elsewhere, the Commission should now reaffirm that finding, which resolves any legitimate issues regarding pricing of transport services.²⁹

C. The Commission Should Grant Forbearance from Transport UNEs on a Nationwide Basis, But at a Minimum Should Do So Consistent with USTelecom’s Recently Proposed Framework

The record of the BDS proceeding together with the Windstream agreement and evidence submitted in the record here demonstrate that the Commission should eliminate transport UNEs on a nationwide basis.

As explained above, profound changes in the marketplace have rendered transport UNEs unnecessary nationwide.³⁰ And as Verizon and other commenters have demonstrated, the Commission is under no legal obligation to conduct a localized market analysis in order to reach this conclusion.³¹

As also noted above, one of the largest competitive providers, Windstream, has agreed to a transition plan that would result in the elimination of all UNEs, including transport and dark fiber UNEs, without harming customers’ ability to obtain the communications services they

²⁹ See, e.g., Comments of Verizon at 3-7, *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket Nos. 17-144, 16-143 & 05-25 (FCC filed Feb. 8, 2019); Verizon BDS Transport Remand Reply at 1-5.

³⁰ See, e.g., Petition for Forbearance of USTelecom—The Broadband Association at 12-14, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141 (FCC filed May 4, 2018) (“Petition” or “USTelecom’s Petition”); USTelecom Reply at 1-7, 14-15; Verizon Comments at 13-14; AT&T Comments at 13-17; CenturyLink Reply at 8-9; Puerto Rico Telephone Reply at 13-14.

³¹ See, e.g., Petition at 12-14; USTelecom Reply at 1-7, 14-15; Verizon Comments at 13-14; AT&T Comments at 13-17; CenturyLink Reply at 8-9; Puerto Rico Telephone Reply at 13-14.

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desire.³² This transition plan would give the industry adequate time to adjust to the new regime, which will ensure that providers will continue to have access to the communications services they need as they prepare for the transition to a more competitive environment. The fact that one of the largest competitive providers agreed to this plan demonstrates that it is a reasonable approach that would allow competition to continue to flourish.

To escape the fact that UNEs have served primarily to depress rather than promote the deployment of competitive facilities, INCOMPAS has claimed CLECs need UNEs to help deploy the fiber infrastructure for 5G.³³ But CLECs made similar claims with respect to 4G and 3G before that, and the evidence shows that those wireless services were deployed rapidly and broadly across the United States with very little use of UNEs or CLEC fiber.³⁴ Indeed, Sprint has long maintained that it has relied on CLECs to a minimal extent.³⁵ But when Sprint sought

³² See Letter from Jonathan Banks, USTelecom, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (June 21, 2018).

³³ See, e.g., Letter from Karen Reidy, Vice President, Regulatory, INCOMPAS, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-141, at 1 (Mar. 4, 2019); INCOMPAS April 17, 2019 Ex Parte at 1-2.

³⁴ Compare, e.g., *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, ¶ 36 (2005) (finding that the mobile wireless services market is one “where competition has evolved without access to UNEs,” and declining to order “unbundling of network elements to provide services in the mobile wireless services market”), with *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Fifth Report, 23 FCC Rcd 9615, ¶ 19 (2008) (“Since the [2004] *Fourth Report*, wireless operators have greatly expanded and upgraded their broadband networks to allow subscribers access to the Internet . . .”).

³⁵ See, e.g., Comments of Sprint Nextel Corp. at iii, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 & RM-10593 (FCC filed Aug. 8, 2007) (“[I]n 2006, Sprint Nextel purchased 98% of its DS1 and DS3 circuits in Chicago from AT&T; 97% of its DS1 and DS3 circuits in Boston from Verizon; and 99% of its DS1 and DS3 circuits in San Francisco from AT&T.”).

to modernize its backhaul network several years ago, Sprint did so without unbundled network elements, and instead awarded contracts to a wide range of competitive providers that had deployed their own facilities.³⁶ The CLECs' 5G claim is not only contrary to past experience, but makes little sense on its face given that CLECs have had dedicated transport UNEs available for decades. Rather than use transport UNEs as a bridge to deploy fiber, CLECs' arguments here are an attempt to maintain artificially low rates, which are more likely to deter true facilities-based competition than to promote it.

If the Commission determines that the record nonetheless does not warrant nationwide forbearance for transport UNEs, the Commission should at a minimum adopt the narrower proposal that USTelecom has recently put forth. As USTelecom has demonstrated, the Commission should forbear from unbundling obligations for interoffice routes between wire centers that qualify as Tier 1 or Tier 2 wire centers under the Commission's unbundling rules.³⁷ Each of these wire centers has been shown to contain a substantial concentration of business demand, significant facilities-based competition, or both.³⁸ USTelecom has also shown that the Commission's December 2018 Form 477 data show that cable companies have deployed

³⁶ Carol Wilson, *Sprint To Reveal Backhaul Contract Winners Friday*, Light Reading (Oct. 5, 2011), http://www.lightreading.com/document.asp?doc_id=213050 (Sprint said it "will end up with '25 to 30 significant backhaul providers,' that will likely be a mix of incumbent LECs, cable MSOs and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber for Sprint's new multi-mode network.") (emphasis added); *Sprint Nextel Corporation at Pacific Crest Global Leadership Technology Forum – Final*, FD (Fair Disclosure) Wire, Transcript 081312a4874232.732 (Aug. 13, 2012) (statement by Sprint VP, Strategic Programs Marty Nevshemal); Mike McCormack et al., Nomura Equity Research, *Sprint Nextel Corporation: Takeaways from Meetings with Management*, at 2 (June 21, 2012).

³⁷ See USTelecom May 6 Ex Parte at 11-12.

³⁸ See USTelecom May 6 Ex Parte at 11 (citing 47 C.F.R. § 51.319(d)(3)).

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networks that entirely circumvent ILEC transport covering the vast majority of the country.³⁹

Although the data support eliminating dedicated transport UNEs nationwide, the Commission must at a minimum do so in the areas where these and other data, including the April Data Tables, show that competition already exists. The statute expressly permits the Commission to follow such an approach and grant partial forbearance,⁴⁰ which the Commission has done on multiple occasions.⁴¹

D. The Commission Should Grant Forbearance from Dark Fiber UNEs Nationwide

The evidence demonstrating that the Commission should forbear from transport UNEs also supports a finding that dark fiber UNEs should be eliminated nationwide. Where competitive fiber has been deployed, that fiber can be used to support either lit or dark services.⁴²

³⁹ See USTelecom May 6 Ex Parte at 10 (citing May 6 Economists Decl. at 4).

⁴⁰ 47 U.S.C. § 160(c) (“The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.”); see *Cellular Telecommunications Indus. Ass’n’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, Order on Reconsideration, 15 FCC Rcd 4727, ¶ 22 (2000) (interpreting the text “in part” in Section 160(c) as permitting the Commission to grant in part and deny in part petitions for forbearance).

⁴¹ See, e.g., *Telecommunications Carriers Eligible for Universal Service Support*, Order, 25 FCC Rcd 13866 (2010) (granting Conexions forbearance with respect to the Lifeline program but denying petition as to Link Up); *Connect America Fund*, Report and Order, 29 FCC Rcd 15644 (2014) (granting forbearance in part, as limited to specific areas); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157 (2015) (granting forbearance for future customers but not the embedded base).

⁴² See, e.g., *Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, ¶ 67 (2016) (“Separate from the provision of BDS services, many companies provide access to dark fiber, and, in some cases, this is the primary focus of their business. . . . Lessees, like mobile carriers and system integrators, can equip the fiber with the necessary electronics to provide any service they wish,

Thus, where competitive deployment justifies the removal of transport UNEs that include electronics it likewise justifies the removal of dark fiber UNEs that do not include electronics.

As Verizon demonstrated previously,⁴³ there is minimal use of dark fiber UNEs.⁴⁴ Verizon both uses and sells a *de minimis* amount of dark fiber UNEs.⁴⁵ In the few locations where we use these arrangements, moreover, there are ample alternative services and arrangements to dark fiber UNEs.

The record also shows that, [BEGIN HIGHLY CONFIDENTIAL]

⁴⁶ [END HIGHLY CONFIDENTIAL] In the case of Verizon, for example, less than [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL] of the dark fiber UNE circuits it provides are in noncompetitive BDS counties.

including BDS. Consequently, the supply of BDS over dark fiber takes on significant aspects of facility-based competition.”).

⁴³ See Letter from Frederick E. Moacdieh, Executive Director – Federal Regulatory and Legal Affairs, Verizon to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (Sept. 24, 2018) (“Verizon September 24, 2018 Ex Parte”); Verizon July 20, 2018 Ex Parte at 2.

⁴⁴ As Verizon reported previously, it uses [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]. Verizon September 24, 2018 Ex Parte at 2.

⁴⁵ Verizon July 20, 2018 Ex Parte at 2.

⁴⁶ [BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]

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II. THE COMMISSION SHOULD FORBEAR FROM THE OTHER UNBUNDLING AND RESALE OBLIGATIONS COVERED BY USTELECOM'S PETITION

The evidence also supports nationwide forbearance from the other regulatory obligations covered by USTelecom's petition, including the requirement to provide unbundled digital and analog loops and to provide resale services under Section 251(c)(4). Here, too, if the Commission determines that the record does not support forbearance nationwide, it should at a minimum adopt the framework that USTelecom recently proposed.⁴⁷

DS1 and DS3 UNE Loops. Verizon and other commenters have previously shown that the record supports forbearance from DS1 and DS3 UNE loops nationwide.⁴⁸ In the *BDS Order*, the Commission determined that facilities-based competition for DS1 and DS3 channel terminations is sufficient to warrant the removal of ex ante regulation in more than 90% of locations with business data services demand.⁴⁹ And in other areas, tariff obligations and price caps ensure just and reasonable prices.⁵⁰

As with dedicated transport, the Commission's findings in the *BDS Order* regarding DS1 and DS3 channel terminations – which the Eight Circuit affirmed⁵¹ – directly apply to DS1 and DS3 UNEs. Whether provided as wholesale services or as UNEs, DS1 and DS3 offerings are provisioned using the same underlying facilities and both are sold for the provision of enterprise

⁴⁷ USTelecom May 6 Ex Parte at 3-8, 12-14.

⁴⁸ See, e.g., Verizon Comments at 8-14; AT&T Comments at 13-20.

⁴⁹ *BDS Order* ¶ 142.

⁵⁰ See, e.g., Petition at 28-29; see also, e.g., AT&T Comments at 4, 14 (“[P]rice caps render continued UNE-based pricing regulation unnecessary and counterproductive.”).

⁵¹ *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018).

services.⁵² To the extent that DS1 and DS3 UNEs may theoretically be used in some cases as inputs to consumer-based offerings, moreover, the same is true for DS1 and DS3 channel terminations. DS1 and DS3 channel terminations and UNEs are interchangeable, differing only as to how they are priced. Thus, as we explained above, Verizon's experience indicates that competitors consistently convert DS1 and DS3 special access channel terminations to UNEs at the same locations and for the same customer groups.

In the event the Commission does not grant nationwide forbearance for DS1 and DS3 loops, at a minimum it should forbear in counties that have already been deemed competitive by the Commission in the BDS proceeding, and in census blocks where cable operators are offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream. In areas where cable competition exists, DS1 and DS3 UNEs are plainly not needed to facilitate competition for consumer-based broadband services, even assuming, contrary to fact, these UNEs were being used for that purpose. As USTelecom has shown, 90% of households had access to cable services with at least 25 Mbps download speeds.⁵³ USTelecom also demonstrated that cable broadband deployment at higher speed tiers is rapidly growing and is available to similar portions of U.S. households at higher speeds tiers.⁵⁴

⁵² *BDS Order* ¶ 6 (“Businesses, non-profits, and government institutions use business data services to enable secure and reliable transfer of data, for example, as a means of connecting to the Internet or the cloud, and to create private or virtual private networks. Business data services support applications that require symmetrical bandwidth, substantial reliability, security, and connected service to more than one location.”).

⁵³ USTelecom May 6 Ex Parte at 5 (citing May 6 Economists Decl. at 2-3).

⁵⁴ USTelecom May 6 Ex Parte at 5.

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Digital DS0 Loops. The record also supports nationwide forbearance from DS0 digital loops nationwide.⁵⁵ Widespread and robust competition from cable – which reaches approximately 90% of households with speeds of at least 25 Mbps – renders unbundling unnecessary to ensure the availability of services provided using unbundled DS0 digital loops at competitive prices. At a minimum, therefore, the Commission should forbear from enforcing unbundling requirements for digital DS0 loops in census blocks featuring competition from a cable provider offering service at speeds of at least 25 Mbps downstream and 3 Mbps upstream. If anything, this relief is conservative because satellite broadband offerings that offer up to 100 Mbps downstream and up to 20 Mbps upstream also are available nationwide, and can be used for voice services as well as broadband access.⁵⁶

Although Windstream – one of the largest competitive providers – has withdrawn its objection to USTelecom’s forbearance petition, some parties have claimed that the continued availability of DS0 digital loops is necessary to enable competitive providers to deliver broadband services to rural areas. There is no evidence to support such claims. To the contrary, the record shows that there is relatively minimal use of UNEs to serve such communities.⁵⁷ Verizon’s own experience confirms that DS0 digital loops are not necessary for consumers to

⁵⁵ Verizon Comments at 9-14; AT&T Comments at 26-28.

⁵⁶ USTelecom May 6 Ex Parte at 7 (citing *Connect Your Business with High-Speed Internet*, Viasat Exede, <https://www.exede.com/business/>).

⁵⁷ See Letter from AJ Burton, Vice President – Federal Regulatory, Frontier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2 (July 11, 2018) (“We explained that there was in fact very little CLEC ordering in rural areas. To the extent that there was any ordering in rural areas, this ordering was for business locations, and these locations could be served by at least one other facilities-based provider in addition to Frontier.”); AT&T Comments at 27-28.

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receive competitive broadband services. [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL].

Analog DS0 loops. Analog loops are used overwhelmingly (if not entirely) to provide voice service, where ILECs have long ceased to have market power. As Verizon has and others have previously demonstrated, competition for voice services is intense, and the goals of the 1996 Act have been fulfilled.⁵⁸ ILEC switched access lines have declined by more than 80% over the past two decades, and are now used in only 11% of U.S. households.⁵⁹ Customers are instead relying on wireless, cable, VoIP, and other alternatives. Under these circumstances, there is no basis to retain unbundling of analog DS0 loops anywhere in the country and nationwide forbearance is appropriate.

Section 251(c)(4) Resale. As with analog DS0 loops, Section 251(c)(4) resale is used almost exclusively to provide voice service, and there is extensive competition in the provision of such offerings.⁶⁰ This form of resale also is a very small and declining portion of the marketplace – accounting for less than 1% of total retail lines, according to USTelecom’s analysis.⁶¹ Competitive providers are currently using other commercial arrangements to resell

⁵⁸ See, e.g., Verizon Comments at 14-19; AT&T Comments at 7-8, 20-21; Petition at 7-10; USTelecom May 6 Ex Parte at 8.

⁵⁹ Petition at 7-9, Charts 1 & 2; USTelecom May 6 Ex Parte at 8.

⁶⁰ See, e.g., Petition at 8-11, 15-18, 26-27; AT&T Comments at 23; CenturyLink Reply at 2-5, 12-14, 16-25; Letter from James P. Young, Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 8 (Dec. 28, 2018).

⁶¹ USTelecom May 6 Ex Parte at 12.

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voice services, and ILECs will have every incentive to continue making such alternatives available.⁶² Nationwide forbearance is therefore appropriate.

CONCLUSION

For the foregoing reasons, the Commission should grant forbearance from transport UNEs, loop UNEs, and Section 251(c)(4) resale obligations nationwide. At a minimum, the Commission should grant forbearance from these obligations consistent with the narrower framework that USTelecom has proposed.

Respectfully submitted,

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⁶² See, e.g., AT&T Comments at 22-23; CenturyLink Reply at 6, 17.